

continued from previous page

work closely with the Young Lawyers Division to tailor our programs to new attorneys who do not necessarily have financial resources for expensive bar activities. In my opinion, these efforts will require some experimentation. Some matters may work well and others may not. Those that do not should be abandoned, while those that work well should be pursued.

5. DO YOU THINK IT IS BENEFICIAL FOR ATTORNEYS TO ATTEND THE STATE BAR CONVENTION?

MARKA. FILOSA: This is, of course, up to the individual members. I personally believe that it benefits the profession, the people our profession serves, namely our clients, if we get together in the less adversarial atmosphere than that of court. I believe the bar convention is one of those types of opportunities.

WILLIAM L. LUTZ: Yes. The State Bar convention is an inexpensive source of continuing legal education. It also is a good place to meet attorneys from other areas of the state. Furthermore, the bar convention is a good source to obtain more information about the activities of the State Bar and learn new products that may be available on the market.

6. AS A MEMBER OF THE BOARD OF BAR COMMISSIONERS, HOW WOULD YOU RESPOND TO YOUR DISTRICT'S CONCERNS?

MARK A. FILOSA: As I've indicated in my previous answers, I recognize there are a significant number of members of the State Bar that do not feel part of the organization. I have some suspicions of why this may be the case. The fact that there is this perception needs to be dealt with. I realize many commissioners much smarter than I have dealt with this problem. I believe they've had various degrees of success. I would like an opportunity to see if I might be able to do just a little bit to alleviate some of the feeling of non-belonging that some members feel.

WILLIAM L. LUTZ: As noted in my response to Question 1, our district is very large geographically. I think it is important as a member of the board of bar

commissioners to meet with the local bar associations and advise them of issues facing the State Bar and secure their input on those issues. Moreover, it is important to listen to the concerns of the members of the local bar associations and try to address those concerns at the state level where they may effect a large number of attorneys.

7. WHAT ARE YOUR GOALS FOR THE BOARD OF BAR COMMISSIONERS AND THE LEGAL PROFESSION IN NEW MEXICO?

MARKA. FILOSA: As I indicated in my answer above, it would be my goal to have more members really believe that this is their bar association.

WILLIAM L. LUTZ: My goals are to improve the climate for the practice of law, work to improve the image of the profession, work with the other bar commissioners to ensure that the State Bar is efficient, and that the dues contributed by the members are spent in the most cost effective manner. A further goal is to ensure that the interests of the attorneys in the south central and southwestern parts of New Mexico are represented on the board of bar commissioners and their views are made known to the board.

NOTICES

**Formal Reprimand
In the Matter of
Rosemary Traub, Esq.
An Attorney Admitted to Practice
Before the Courts of the State of
New Mexico.
Disciplinary No. 02-93-228**

THE VIOLATIONS of the Rules of Professional Conduct which have resulted in the issuance of this reprimand occurred during your representation of Joan Carlson in a divorce proceeding filed by her husband. You were retained to represent Ms. Carlson on or about November 13, 1991, after she was served with a petition and summons.

On or about December 17, 1991, Mr. Carlson stopped the \$243 weekly payments he had been making voluntarily. Although you advised Ms. Carlson

that you would file something to force Mr. Carlson to resume the weekly payments, you took no action to require Mr. Carlson to pay interim support. Nonetheless, on or about January 28, 1992, you told Ms. Carlson that you had been able to have interim support payments started. On February 14, 1992, you paid Ms. Carlson \$235, but you did not tell Ms. Carlson that you were paying her with your own money.

On February 21, 1992, you issued an office check to Ms. Carlson for \$343. When Ms. Carlson asked why she was being paid with your check, you told her that the court had an interim support fund and that you would be reimbursed from money Mr. Carlson had paid into the fund. In reality, you were again paying Ms. Carlson with your own money. You continued to make payments to Ms. Carlson with your own money until she discharged you in August of 1992. In all, you paid Ms. Carlson \$4,831 from your own funds.

At no time prior to August of 1992 did you tell Ms. Carlson that the money you were giving her was your own, or that Mr. Carlson was not making any interim support payments. Five of the nine checks you gave Carlson bore notations clearly representing to Carlson that the payments were interim support payments from Mr. Carlson. The notations on the checks included, "2/21 weekly interim payment," "partial payment from HC," and "payment from Dst Ct."

At the beginning of the representation, Ms. Carlson also expressed concern that Mr. Carlson was dissipating the assets of a corporation in which she claimed a community property interest. Although you told Ms. Carlson that you would have the corporate assets appraised and the corporate books audited, you neither took action to determine whether dissipation of assets was occurring nor to stop dissipation of assets.

Throughout the representation, you made misrepresentations to Ms. Carlson about the status of the divorce case. These misrepresentations included that you were obtaining appraisals of the farms owned by the corporation and an audit of the corporation's books; that Judge Kass had ordered Mr. Carlson to pay alimony; that

continued on next page

ordered Mr. Carlson to pay alimony; that Mr. Carlson had appealed the alimony decision and, therefore, Ms. Carlson's deposition had to be taken; that you had taken Mr. Carlson's deposition; and that the final divorce papers had been signed by the judge. None of these representations were true.

In addition, you misrepresented the status of the divorce case to Ms. Carlson by telling her hearings were set when there were no hearings set. On several occasions, you and Ms. Carlson waited outside the courtroom. You told Ms. Carlson that Mr. Carlson had not appeared, or that the judge wanted more information before holding the hearing. On other occasions, you told Ms. Carlson a court date had been postponed or cancelled. In reality, no hearings were set in the divorce case at any time while you represented Ms. Carlson.

In August of 1992, you told Ms. Carlson you had misrepresented the status of the divorce case. You did not tell her that the money you had been paying her was your own. Ms. Carlson terminated your services and retained another attorney to represent her. In response to an inquiry from that lawyer, you repeated the misrepresentation that Mr. Carlson had been paying interim support. The lawyer subsequently learned from Mr. Carlson's lawyer that Mr. Carlson had made no interim support payments after discontinuing his voluntary payments in December of 1991.

Ms. Carlson filed a disciplinary complaint on September 14, 1992. The response submitted on your behalf alleged that you were suffering from severe and debilitating health problems during the time you represented Ms. Carlson. Specifically, it stated you suffered from severe migraine headaches, which frequently required emergency room treatment. The response further stated that these health problems were most severe from February of 1992 throughout the summer of 1992, and that you were physically and mentally unable to focus on your practice during that period of time.

Following an investigation of Ms. Carlson's complaint, a formal Specification of Charges was filed against you on March 2, 1993. In addition to alleging the

matters set forth above, the charges recited that in February of 1990, you received an Informal Admonition for preparing a false order in a divorce case to placate a client who was upset because no action was being taken in her case. The false order was presented to the client, not to the court.

After you filed an Answer to the Specification of Charges, a Conditional Agreement Not to Consent and Consent to Discipline was negotiated pursuant to Rule 17-211 of the Rules Governing Discipline. In that agreement, you agreed not to contest allegations that you had violated the following provisions of the Rules of Professional Conduct: Rule 16-101, by failing to act competently on behalf of your client; Rule 16-103, by failing to act diligently on behalf of your client; Rule 16-108(E), by providing financial assistance to a client in connection with pending litigation; Rule 16-116(A), by failing to withdraw from the representation when your physical or mental condition materially impaired your ability to represent your client; Rule 16-302, by failing to make reasonable efforts to expedite the litigation consistent with the interests of your client; Rule 16-804(C), by engaging in conduct involving misrepresentation; Rule 16-804(D), by engaging in conduct prejudicial to the administration of justice; and Rule 16-804(H), by engaging in conduct that adversely reflected on your fitness to practice law.

Pursuant to the consent agreement, you understood and agreed that you would be suspended for one year from the practice of law by the New Mexico Supreme Court, that the imposition of the one-year suspension would be deferred for eighteen (18) months after the closure of your law practice, and that, if you satisfied all conditions of the consent agreement during the deferral period, you would receive a formal reprimand instead of a one-year suspension.

The conditions which you were required to satisfy included that you receive psychological counseling, that you not practice law for a period of six months following the closure of your law practice and that, for the remaining twelve months of the deferral period, you would practice law only in a supervised setting acceptable to disciplinary counsel. In addition, you

were required to pay the costs of the proceeding. You cooperated throughout the disciplinary investigation and proceeding and satisfied all conditions of the deferral of suspension, including payment of costs. You are, therefore, receiving a Formal Reprimand to conclude this matter, instead of the one-year suspension.

The purpose of lawyer discipline is the protection of the public and the integrity of the legal system and profession. *Matter of Sullivan*, 108 N.M. 735, 779 P.2d. 112 (1989). In this case, that purpose will have been served if you have learned that you must either do what you undertake to do for a client, or, if you are unable to do so, withdraw from the representation. Of course, withdrawing from a client's representation must always be done in conformance with Rule 16-116(D), which requires a lawyer to protect the client's interests any time a representation ends.

As previously noted, prior to this proceeding, you received an Informal Admonition for presenting a bogus order to a client to appease her demands. Notwithstanding that admonition, you paid almost \$5,000 of your own money to Ms. Carlson under false pretenses to alleviate her concerns and need for interim support. This deception, even though providing your client badly needed financial assistance, was inexcusable. "When dealing with an attorney, another person (whether an attorney or a lay person) has the right to expect that the attorney will be honest and straightforward." *Matter of Ellis*, 29 S.B.B. 29 (September 27, 1990). Honesty is obviously a primary obligation a lawyer owes to a client.

In order for you to avoid more serious discipline in the future, it is imperative that you communicate candidly with your clients about the status of their legal matters, even unpleasant news which a client may not want to hear. The Rules of Professional Responsibility provide specific protection and guidance in that regard. Rule 16-201 states that, in representing a client, "...a lawyer shall exercise professional judgment and render candid advice." The rules provide the protection for imparting bad news; the lawyer must have the fortitude to deliver it. A lawyer

continued on next page

continued from previous page

cannot always make a client happy. Nonetheless, a lawyer must always be honest with a client about what the lawyer may or may not be able to accomplish, about what the client can expect, and about what the lawyer has or has not done.

This Formal Reprimand will be filed with the Supreme Court in accordance with Rule 17-206(D) and will remain as a part of your permanent record with the Disciplinary Board, where it may be revealed upon any inquiry to the board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this reprimand will be published in the State Bar of New Mexico *Bar Bulletin*.

*/s/ Larry Ramirez, Chair
The Disciplinary Board*

U.S. Bankruptcy Court New Telephone Numbers

Effective August 28, 1995, the telephone numbers for the clerk's office and the judges' offices will be changed to:

Office of the Clerk - 248-6500
Automated Systems - 248-6509
PACER - 248-6518
Administrative Services - 248-6512
Stewart Rose, Judge - 248-6531
Mark B. McFeeley, Judge - 248-6526
U. S. Trustee - 248-6544.

U.S. District Court New Telephone/Fax Numbers

Effective August 28, 1995, the telephone and Fax numbers for U.S. District Court in Albuquerque will be as follows:

John E. Conway, Chief Judge
Phone: 248-8016 Fax: 248-8002
Dixie Wellborn, Courtroom Deputy
Phone: 248-8115
Jerry Martinez, Court Reporter
Phone: 248-8087

James A. Parker, Judge
Phone: 248-8136 Fax: 248-8139
Cynthia Blumenthal,
Courtroom Deputy
Phone: 248-8138
Paul Baca, Court Reporter
Phone: 248-8147

C. LeRoy Hansen, Judge
Phone: 248-8055 Fax: 248-8113
Kathy Gonzales, Courtroom Deputy
Phone: 248-8110
Freda Donica, Court Reporter
Phone: 248-8000

E.L. Mecham, Senior Judge
Phone: 248-8046 Fax: 248-8122
Cecilia Reyes, Courtroom Deputy
Phone: 248-8090

William W. Deaton,
Chief Magistrate Judge
Phone: 248-8038 Fax: 248-8104

Lorenzo F. Garcia, Magistrate Judge
Phone: 248-8039 Fax: 248-8103

Don J. Svet, Magistrate Judge
Phone: 248-8037 Fax: 248-8105

Robert M. March, Clerk of Court
Phone: 248-8052 Fax: 248-8124

Intake Section
Phone: 248-8052
Civil & Criminal Section
Phone: 248-8128
Jury Section
Phone: 248-8057
Magistrate Section
Phone: 248-8076
CJA Section
Phone: 248-8004
Automation Section
Phone: 248-8120
PACER
Phone: 248-8031

New Mexico Supreme Court Proposed Rules Revisions

The Supreme Court is considering the amendment of the Rules Governing the Recording of Judicial Proceeding and the adoption of a new rule requiring continuing education for court reporters.

If you would like to comment on the proposed amendments set forth below, please send your written comments to:

Kathleen J. Gibson, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
Comments must be received by September 22, 1995.

For your reference, the full text of the above mentioned rules were published in

the August 3 (Vol. 34, No. 34) issue of the *Bar Bulletin*.

Fifth Judicial District Nominating Commission Meeting

Six (6) applications have been received in the Judicial Selection Office as of 5 p.m., August 24, for the judicial position in the Fifth Judicial District, Division I, to be located in Eddy County.

The Fifth Judicial District Nominating Commission will meet Friday, September 8, at the Eddy County Courthouse, Carlsbad, beginning at 8:30 a.m. in courtroom one, to evaluate the applicants for the judicial position. The commission meeting is open to the public.

The names of the applicants are in alphabetical order as follows:

Sharron S. Davidson
Jay W. Forbes
Floyd D. "Terry" Haake, Jr.
Connie R. Martin
Kurt Reif
Patsy D. Reinard

CLE Satellite Broadcast

In response to requests by members who reside outside of New Mexico's major population centers, CLE of NM, Inc., is offering a satellite broadcast on September 16. "Evidentiary Dilemmas at Trial in Civil and Criminal Practice" features Albuquerque attorney Nancy Hollander and UNM Professor Barbara Bergman. The success of this program will determine the viability of future satellite broadcasts offered by CLE of NM, Inc.

Legal Services Corporation Competitive Grant Funds

Under an Appropriation Bill passed by the U.S. House of Representatives, Legal Services Corporation (LSC) grants would only be made on a competitive basis for 1996. The Senate has not yet acted and, until final Congressional action late this fall, the amount of funds

continued on next page